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NORTHERN DISTRICT OF CALIFORNIA

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E-Filing

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LOGANAYAGAM JEYANAYAGAM

Plaintiff,

vs.

EMILIO T. GONZALEZ, Director of the
United States Citizenship and Immigration
Services; ROSEMARY MELVILLE, District
Director of the San Francisco District Office
for the United States Citizenship and Immigration
Services; UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES;
MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security;
ALBERTO GONZALES, United States Attorney
General; ROBERT MUELLER, Director of the
Federal Bureau of Investigations; and FEDERAL
BUREAU OF INVESTIGATIONS

Defendants.

CV NO:

WHA

PETITION FOR HEARING ON
ON NATURALIZATION
APPLICATION

IMMIGRATION CASE

I. INTRODUCTION

1. This is an action for a hearing on a naturalization application in accordance with the provision of 8 U.S.C. § 1447(b). It is brought for the purpose of adjudication of the naturalization application in court and by the court, or a remand to CIS for immediate adjudication.

II. PARTIES

2. Plaintiff, Loganayagam Jeyanayagam, is a legal permanent resident residing within the San Francisco District of the United States Citizenship and Immigration Services.

3. Defendant, Emilio T. Gonzalez, is the Director of the United States Citizenship and Immigration Services. He is sued in his official capacity.

4. Defendant, Rosemary Melville, is the District Director of the San Francisco office for the United States Citizenship and Immigration Services. She is sued in her official capacity.

5. Defendant, United States Citizenship and Immigration Services is the agency responsible for implementing the provisions of the Immigration and Nationality Act and is the successor agency to the Immigration and Naturalization Service.

6. Defendant, Michael Chertoff, is the Secretary of the United States Department of Homeland Security, which oversees the United States Citizenship and Immigration Services. He is sued in his official capacity.

7. Defendant, Alberto Gonzales, is the Attorney General of the United States. He is sued in his official capacity.

8. Defendant, Robert Mueller, is the Director of the Federal Bureau of Investigations, the federal agency that is responsible, in conjunction with other agencies, for completing security checks and background clearances of foreign nationals seeking immigration benefits from the United States Citizenship and Immigration Services.

1 9. Defendant, Federal Bureau of Investigations is the federal agency, which is
2 responsible, in conjunction with other agencies, for completing security checks and background
3 clearances of foreign nationals seeking immigration benefits from the United States Citizenship
4 and Immigration Services.
5

6 **III. JURISDICTION AND VENUE**

7 10. Jurisdiction of this court is invoked pursuant to 8 U.S.C. § 1447(b) (2006),
8 Immigration & Nationality Act (INA) § 336(b) (2006); pursuant to 28 U.S.C. § 1331 (2006), this
9 being an action which arises under the Constitution and laws of the United States, specifically
10 the Immigration and Nationality Act, 8 U.S.C. § 110, et seq. (2006); and pursuant to 5 U.S.C. §
11 555 and § 701, et. seq. (2006), this being an action alleging violation of the Administrative
12 Procedure Act.
13

14 11. Venue properly lies in this Court pursuant to the provisions of 28 U.S.C. § 1391(e)
15 (2006); and 28 USC § 1402 (2006).

16 12. Plaintiff alleges eligibility for payment of reasonable attorney's fees under the terms
17 of the Equal Access to Justice Act. 28 U.S.C. § 2412 (2006) and 5 USC § 504 et seq. (2006)
18

19 **IV. INTRADISTRICT ASSIGNMENT**

20 13. Pursuant to Civil L.R. 3-2, the Oakland division has jurisdiction over this matter as
21 Plaintiff resides in Alameda County.

22 **V. FACTUAL BACKGROUND**

23 14. Plaintiff has been a legal permanent resident of the United States since August 13,
24 1982.
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27
28

15. On or about August 8, 2003, Plaintiff filed an Application for Naturalization, Form N-400, with the United States Citizenship and Immigration Services. Plaintiff's alien number ("A number") is 26-341-675.

16. On or about March 16, 2004, Plaintiff appeared before an interviewing officer in Oakland, California for an examination of the Application for Naturalization. At the conclusion of the interview, Plaintiff was told that he passed the history and civics tests, but that his case could not be completed because his background clearance was still pending.

17. Plaintiff met all the statutory requirements for naturalization as set out in Title 8 U.S.C. § 1427, INA § 316, including residence, physical presence, age, good moral character and legal status for naturalization.

18. Plaintiff has made numerous inquires, requesting adjudication of the application. It has been over three years since the interview, and to date, the Application for Naturalization remains unadjudicated.

VI. CAUSES OF ACTION

A. ADJUDICATION OF THE NATURALIZATION PETITION IN COURT AND BY THE COURT

19. Plaintiff filed an Application for Naturalization, as previously described hereinabove, with Defendants. Defendants have accepted the application and the corresponding filing fees paid by Plaintiff. Plaintiff has also submitted all the necessary documents in support of said application.

20. Title 8 C.F.R. § 335.3(a) provides that “[a] decision to grant or deny the application shall be made at the time of the initial examination or within 120-days after the date of the initial examination of the application for naturalization under §335.2.”

1 21. Through purposeful acts, negligence, poor management and/or inattention,
2 defendants have failed to complete the ministerial actions that would result in making a
3 determination on Plaintiff's naturalization application as prescribed by INA section 335, 8 U.S.C.
4 § 1446(2006).
5

6 22. Several inquiries have been submitted requesting information regarding the current
7 status of Plaintiff's petition, as well as for the determination on this petition. These inquiries
8 were submitted in accordance with the procedures established by Defendants for such purposes.

9 23. Defendants have not taken action to complete the adjudication of said petition in this
10 action despite these numerous inquiries and requests.

11 24. Defendants have adjudicated similar petitions filed by persons who are not parties to
12 this action and which were filed subsequent to the application filed by Plaintiff.
13

14 25. Defendants do not employ any reasonable system to safeguard that: (1) files are
15 centrally monitored to guarantee that they are being closed out on a rational, efficient and
16 nonpreferential basis; or (2) applicants are provided with information on the status of files that
17 have not been adjudicated on a timely basis.

18 26. Plaintiff has been denied due process of law under the terms of the Fifth Amendment
19 to the United States Constitution by Defendants' neglect and refusal to take action to adjudicate
20 Plaintiff's application.
21

22 27. Plaintiff has suffered and continues to suffer irreparable harm as a result of
23 Defendants' delay and refusal to take action. This harm includes: an unreasonable delay in
24 establishing eligibility for United States citizenship, as well as the many benefits, rights and
25 privileges of United States citizens; and generally, continuing mental distress resulting from his
26 unsettled legal condition.
27
28

1 28. There is no reasonable basis for Defendants' position and it is not substantially
2 justified under the law.

3 29. Defendants have in their possession all information necessary to complete the
4 adjudication of Plaintiff's Application for Naturalization. Defendants' failure to complete this
5 administrative processing is a disregard of their official duty and clear language of the statute
6 and the agency regulations, which provides that a decision to grant or deny the application shall
7 be made at the time of the initial examination or within 120 days after the date of the initial
8 examination. Plaintiff is wholly without remedy, under the circumstances, unless this Court
9 adjudicates this petition.
10

11 30. Title 8 USC 1447(b), INA § 336(b), states that a naturalization applicant may apply
12 to the United States district court for a hearing on his naturalization application, if CIS fails to
13 adjudicate within 120 days after the date of the initial examination. As such, Plaintiff requests
14 that this Court to adjudicate his naturalization application in court and by the court.
15

16 **B. ADMINIATRATIVE PROCEDURE ACT**

17 31. The Administrative Procedure Act (hereinafter "APA") provides categorically that:

18 [t]he reviewing court shall-

- 19 (1) compel agency action unlawfully withheld or unreasonably delayed;
20 and
- 21 (2) hold unlawful and set aside agency action, findings, and conclusions
22 found to be-
23 A) arbitrary, capricious, an abuse of discretion or otherwise not in
24 accordance with the law; [or]
25 B) contrary to constitutional right, power, privilege or immunity....

26 Title 5 U.S.C. § 706 (2006). Defendants' conduct in failing to process the Applications to Adjust
27 Status is in violation of the APA.

28 32. The APA provides categorically that "within a reasonable time, each agency shall
proceed to conclude any matter presented to it." Title 5 U.S.C. § 555(b) (2006). In recognition

1 that a failure or unwarranted refusal to adjudicate should be enjoined, Congress provided that
2 courts may review the inaction of an agency and specifically "compel agency action unlawfully
3 withheld or unreasonably delayed." Title 5 U.S.C. § 706 (2006).

4 33. Defendants' conduct in failing to process Applications to Adjust Status, as described
5 in the aforementioned allegations, is capricious and arbitrary and results in severe and
6 unwarranted delay to Plaintiff in obtaining valuable citizenship benefits. The delay so incurred
7 is tantamount to a violation of the APA, Title 5 U.S.C. § 555 and §706.

8 34. Plaintiff has suffered and continues to suffer severe and irreparable injury for which
9 he has have no adequate remedy at law.

10
11 **IV. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays:

13 1. That this Court adjudicates the Form N-400 naturalization application in Court and by
14 the Court;

15 2. Alternatively, this Court order remand to the United States Citizenship and
16 Immigration Services for immediate adjudication and determination;

17 3. That Defendants be permanently enjoined from refusing to communicate with attorney
18 for Plaintiff regarding the status of the case;

19 3. That Defendants be ordered to pay the cost of suit herein;

20 4. That Defendant be ordered to pay Plaintiff's reasonable attorney's fee for this action;
21 and
22

23 5. That the Court grants such other and further relief as it may deem to be necessary and
24 proper.
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1 Dated: July 18, 2007

Respectfully submitted,

LAW OFFICES OF AUDRA R. BEHNÉ

Audra R. Behné

AUDRA R. BEHNÉ

Attorney for the Plaintiff